

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

*Jefferson County, et al. v. Williams, et al.,*  
Case No. 1:19-op-45371

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**CERTAIN DEFENDANTS' OBJECTION TO THE REQUEST BY  
JUDGE BURLISON TO SEVER AND REMAND CLAIMS OF  
JEFFERSON COUNTY AND FRANKLIN COUNTY, MISSOURI**

The Honorable Rex M. Burlison—Presiding Judge of the 22nd Judicial Circuit of Missouri—has informally requested that the Court (1) sever the claims of Jefferson County and Franklin County from the suit filed by 20 Missouri counties and cities and then (2) remand them to his court.<sup>1</sup> Defendants<sup>2</sup> object to this request because it would bypass procedure, conflict with orders entered by this Court to manage the MDL, and cause inefficiencies that the MDL was created to minimize. And, in the end, remand would not even achieve the objective Judge Burlison seeks. Accordingly, the claims of Jefferson County and Franklin County should remain in the MDL, together with the claims of the 18 other Missouri counties and cities in the *Jefferson County* case.<sup>3</sup> The issue of whether to sever and remand those claims should not be addressed unless and until this Court lifts the moratorium on remand motions and a motion to remand is properly before this Court and ripe for decision.

---

<sup>1</sup> See *In re: National Prescription Opiate Litigation*, MDL No. 2804, Dkt. No. 1828-1.

<sup>2</sup> Defendants are CVS Pharmacy, Inc., Missouri CVS Pharmacy L.L.C., Caremark, L.L.C., Caremark Rx, L.L.C., CaremarkPCS Health, L.L.C., AmerisourceBergen Drug Corporation, Cardinal Health, Inc., Express Scripts Holding Company, Express Scripts, Inc., McKesson Corporation, Target Corporation, UnitedHealth Group Incorporated, Optum, Inc., OptumRx, Inc., Walgreen Co. and Walmart Inc.

<sup>3</sup> See *Jefferson County v. Williams, et al.*, No. 1:19-op-45371-DAP (N.D. Ohio).

In further support of this objection, Defendants state as follows:

First, plaintiffs in the *Jefferson County* case have not moved for severance. Accordingly, there is no motion presently before this Court seeking the outcome requested by Judge Burlison. While plaintiffs filed a motion to remand the entire *Jefferson County* case in the transferor court, that motion was not fully briefed prior to transfer.<sup>4</sup> The Court should follow proper process, and decline to decide whether to sever and remand the claims of Jefferson County and Franklin County based on Judge Burlison's request.

Second, the Court put in place a moratorium on remand motions. *See In re: National Prescription Opiate Litigation*, MDL No. 2804, Dkt. No. 1822 (July 9, 2019). Recently, the Court declined to lift the moratorium in order to address certain plaintiffs' remand motions. *Id.* ("[T]he Track One trial is scheduled to begin in mid-October 2019, the Court and Special Masters are ramping up settlement efforts, and the Court and its research and writing team are simultaneously reviewing and addressing 40 Daubert and summary judgment motions. In order to conserve judicial resources and manage its MDL docket efficiently, the Court exercises its inherent authority along with the authority granted by the JPML and the Federal Rules of Civil Procedure not to address Objecting Plaintiffs' remand motions at this time."). Consistent application of the moratorium is important to the efficient management of the MDL. This is no less true when the request for an exception comes not from a party, but from a judge. Indeed, if the Court were to lift the moratorium for the limited purpose of addressing the request for severance and remand from Judge Burlison, it would encourage other state court judges to make

---

<sup>4</sup> Once transferred to the MDL, defendants could not oppose remand due to the moratorium on filings put in place by the Court. In any event, plaintiffs' motion to remand was not properly filed with the transferor court. A stay was in place at the time of filing, and although plaintiffs filed a motion to lift the stay for the limited purpose of allowing plaintiffs to file their motion to remand, the motion was never granted.

similar requests and would undermine the purpose of the moratorium—to help the Court conserve judicial resources and manage its MDL docket efficiently.

Third, the City of St. Louis and St. Louis County have entirely separate suits pending in the MDL. The City of St. Louis and St. Louis County filed their suits in federal court in the first instance, and the JPML transferred them here without objection. *See City of St. Louis v. Purdue Pharma L.P.*, No. 1:18-op-46267-DAP (N.D. Ohio) (filed Nov. 5, 2018); *St. Louis County v. Purdue Pharma L.P.*, No. 1:17-op-45083-DAP (N.D. Ohio) (filed Nov. 10, 2017). While Judge Burlison asserts that severance and remand of the Jefferson County and Franklin County claims “would allow a regional approach to litigate the interest of the metropolitan St. Louis area,” his request will not accomplish that, since the claims of the City of St. Louis and St. Louis County will remain in the MDL. Given the St. Louis cases, the “coordinated regional approach” sought by Judge Burlison can be had only in federal court. Granting his request would upset this potential for coordination.

Finally, Judge Burlison’s court is not the proper venue for the claims asserted by Jefferson County and Franklin County. As the Missouri Supreme Court recently explained, venue for a Missouri resident’s claim is proper only in the county where the plaintiff was first injured. *State ex rel. Johnson & Johnson v. Burlison*, 567 S.W.3d 168, 175 (Mo. 2019). Judge Burlison sits in the City of St. Louis (in the 22nd Judicial Circuit of Missouri), and not in Jefferson County or Franklin County (which are in the 23rd and 20th Judicial Circuits respectively). The Counties claim they were injured by spending public funds in their own jurisdictions, not in St. Louis. Therefore, under *State ex rel. Johnson & Johnson v. Burlison*, venue for these counties’ claims does not lie in Judge Burlison’s court.

For the reasons stated above, Judge Burlison's request should be denied, and the claims of Jefferson County and Franklin County should remain in the MDL, along with the claims of the other 18 counties and cities in the *Jefferson County* case. If the Court opts to address the motion to remand filed by plaintiffs with the transferor court, Defendants respectfully request that the Court set a briefing schedule on that motion.

Date: July 22, 2019

Respectfully submitted,

/s/ Eric R. Delinsky  
Eric R. Delinsky  
Alexandra W. Miller  
ZUCKERMAN SPAEDER LLP  
1800 M Street, NW, Suite 1000  
Washington, DC 20036-5807  
Tel: (202) 778-1800  
edelinsky@zuckerman.com  
smiller@zuckerman.com

Conor B. O'Croinin  
ZUCKERMAN SPAEDER LLP  
100 East Pratt Street, Suite 2440  
Baltimore, MD 21202-1031  
Tel: (410) 949-1160  
cocroinin@zuckerman.com

*Counsel for CVS Pharmacy, Inc., Missouri  
CVS Pharmacy L.L.C., Caremark, L.L.C.,  
Caremark Rx, L.L.C., and CareMarkPCS  
Health, L.L.C.*

/s/ Robert A. Nicholas

Robert A. Nicholas  
Shannon E. McClure  
REED SMITH LLP  
Three Logan Square  
1717 Arch Street, Suite 3100  
Philadelphia, PA 19103  
Tel: (215) 851-8100  
Fax: (215) 851-1420  
rnicholas@reedsmit.com  
smcclure@reedsmit.com

*Counsel for AmerisourceBergen Drug Corporation*

/s/ Enu Mainigi

Enu Mainigi  
Steven M. Pyser  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005  
Tel: (202) 434-5000  
Fax: (202) 434-5029  
emainigi@wc.com  
spyser@wc.com

*Counsel for Cardinal Health, Inc.*

/s/ Adriana Riviere-Badell

Matthew I. Menchel  
Adriana Riviere-Badell  
KOBRE & KIM LLP  
201 South Biscayne Boulevard  
Suite 1900  
Miami, FL 33131  
Tel: (305) 967-6100  
Fax: (305) 967-6120  
[matthew.menchel@kobrekim.com](mailto:matthew.menchel@kobrekim.com)  
[adriana.riviere-badell@kobrekim.com](mailto:adriana.riviere-badell@kobrekim.com)

Steven G. Kobre  
KOBRE & KIM LLP  
800 Third Avenue  
New York, NY 10022  
Tel: (212) 488-1200  
Fax: (212) 488-1220  
[steven.kobre@kobrekim.com](mailto:steven.kobre@kobrekim.com)

Julian W. Park  
KOBRE & KIM LLP  
150 California Street, 19<sup>th</sup> Floor  
San Francisco, CA 94111  
Tel: (415) 582-4800  
Fax: (415) 582-4811  
[steven.kobre@kobrekim.com](mailto:steven.kobre@kobrekim.com)

*Counsel for Express Scripts Holding Company  
and Express Scripts, Inc.*

/s/ Mark H. Lynch  
Mark H. Lynch  
COVINGTON & BURLING LLP  
One City Center  
850 Tenth Street, NW  
Washington, DC 20001  
Tel: (202) 662-5281  
mlynch@cov.com

*Counsel for McKesson Corporation*

/s/ Wendy J. Wildung  
Wendy J. Wildung  
FAEGRE BAKER DANIELS LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
Tel: (612) 766-7759  
Fax: (612) 766 1600  
Wendy.wildung@FaegreBD.com

*Counsel for Target Corporation*

/s/ Tina M. Tabacchi  
Tina M. Tabacchi  
Tara A. Fumerton  
JONES DAY  
77 West Wacker Drive  
Chicago, Illinois 60601  
Tel: (312) 782-3939  
Fax: (312) 782-8585  
tmtabacchi@jonesday.com  
tfumerton@jonesday.com

*Counsel for Walmart Inc.*

/s/ William H. Jordan

William H. Jordan  
Caroline R. Strumph  
ALSTON & BIRD LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
Tel: (404) 881-7000  
Fax: (404) 881-7777  
bill.jordan@alston.com

Brian D. Boone  
ALSTON & BIRD LLP  
Bank of America Plaza, Suite 4000  
101 S. Tryon St.  
Charlotte, NC 28280  
Tel: (704) 444-1000  
Fax: (704) 444-1111  
brian.boone@alston.com

Kimberly K. Chemerinsky  
ALSTON & BIRD LLP  
333 South Hope Street, 16th Floor  
Los Angeles, CA 90071-1410  
Tel: (213) 576-1000  
Fax: (213) 576-1100  
kim.chemerinsky@alston.com

*Counsel for UnitedHealth Group Incorporated,  
Optum, Inc., and OptumRx, Inc.*

/s/ Kaspar Stoffelmayr

Kaspar Stoffelmayr  
BARTLITBECK LLP  
Courthouse Place  
54 West Hubbard Street  
Chicago, IL 60654  
Tel: (312) 494-4434  
Kaspar.Stoffelmayr@BartlitBeck.com

*Counsel for Walgreen Co.*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record on July 22, 2019.

/s/ Eric R. Delinsky  
Eric R. Delinsky  
ZUCKERMAN SPAEDER LLP  
1800 M Street, NW, Suite 1000  
Washington, DC 20036-5807  
Tel: (202) 778-1800  
edelinsky@zuckerman.com

*Counsel for CVS Pharmacy, Inc., Missouri  
CVS Pharmacy L.L.C., Caremark, L.L.C.,  
Caremark Rx, L.L.C., and CareMarkPCS  
Health, L.L.C.*